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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Jessica Noble, a single woman, on behalf of
herself and other similarly situated individuals

Plaintiff,

vs.

Blue House Catering, Inc., an Arizona
Corporation; Ron Wassell and Jane Doe
Wassell, husband and wife,

Defendants.

Case No.:

COLLECTIVE ACTION COMPLAINT

JURY DEMAND

Plaintiff alleges as follows:

NATURE OF THE CASE

1. The Fair Labor Standards Act ("FLSA") is designed to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers" 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. 29 U.S.C. §§ 206(a) & 207(a).

1 2. Employers must compensate employees for all work that employers permit
2 employees to perform. See 29 C.F.R. § 785.11. In such cases, it is the responsibility of
3 employers' management to ensure that work is not performed if management does not desire
4 for such work to be performed. 29 C.F.R. § 785.13. Employers may not accept the benefits of
5 employees performing work without compensating the employees for their work. *Id.*

6 3. Plaintiff brings this action against Defendants for unlawful failure to pay
7 overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
8 (“FLSA”) and specifically the overtime provision of the Act found at §207(a).
9

10 4. For at least three (3) years prior to the filing of this action, Defendants had a
11 consistent policy and practice of allowing its employees to work well in excess of forty (40)
12 hours per week without paying them time and a half for hours worked over forty (40) hours per
13 week.

14 5. For at least three (3) years prior to the filing of this action, Plaintiff worked at
15 least twenty to thirty (20-30) hours in excess of forty (40) hours per week and was not paid
16 time and a half.
17

18 6. Plaintiffs and all similarly situated employees seek to recover unpaid overtime
19 compensation, regular wage compensation, and an equal amount of liquidated damages,
20 including interest thereon, statutory penalties, attorneys’ fees and costs pursuant to 29 U.S.C.
21 §216(b).
22

23 **JURISDICTION AND VENUE**

24 7. This Court has jurisdiction over the subject matter and the parties hereto pursuant
25 to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

8. Venue is proper under 28 U.S.C. §1391(b) because all or a substantial part of the events or omissions giving rise to the claims occurred in this District.

9. The named Defendants, by virtue of their own acts and omissions or by virtue of the acts and omissions committed by one or more of their agents, employees or representatives, as described herein, have conducted business or caused events to occur within the District of Arizona and, more particularly, within Maricopa County, Arizona, as more particularly described herein so as to give rise to both subject matter and personal jurisdiction of this Court.

PARTIES

10. At all times material hereto, Plaintiff is and continues to be residents of Maricopa County, Arizona.

11. At all times material hereto, Blue House Catering, Inc. was incorporated in the State of Arizona and has its principal place of business at 7831 E. Wrightstown Rd. Ste. 113, Tucson, AZ 85715.

12. At all relevant times, Plaintiff and all similarly situated employees were “employees” of Defendants, as defined by 29 U.S.C. §203(e)(1).

13. The provisions set forth in 29 U.S.C § 206 and § 207, respectively, of the FLSA apply to Defendants

14. At all relevant times, Defendants were and continues to be an employer as defined in 29 U.S.C. § 203(d).

15. At all times material to this action, Defendants were and are an enterprise engaged in commerce or in the production of goods for commerce as defined by §203(s)(1) of the FLSA.

1 16. Upon information and belief, and consistent with the information available
2 from the Arizona Corporation Commission, Defendant Ronald Wassell was and is the owner of
3 Blue House Catering, Inc.

4 17. Upon information and belief, at all times material hereto, Defendants
5 Wassell, were and are residents of Maricopa County, Arizona.

6 18. Jane Doe is the fictitious name of Ronald Wassell's wife. When her true
7 name is ascertained this complaint will be amended. Ronald and Jane Doe Wassell have caused
8 events to take place giving rise to this Complaint as to which their marital community is fully
9 liable.
10

11 19. On information and belief, Defendants Ronald Wassell is deemed an
12 "employer" for purposes of the FLSA, including, without limitation, 29 U.S.C. §216, and is co-
13 equally liable with Defendant Blue House Catering, Inc, for all matters.

14 20. At all times material to this action, Blue House Catering, Inc, was and is an
15 enterprise engaged in commerce or in the production of goods for commerce as defined by
16 §203(s)(1) of the FLSA.

17 21. Upon information and belief, at all relevant times, the annual gross revenue
18 of Jar Imports Corporation , exceeded \$500,000.00
19

20 22. The additional persons who may become Plaintiff s in this action "worked" for
21 Blue House Catering, Inc, held similar positions as non-exempt employees as Plaintiff, and
22 worked at least one (1) hours in excess of forty (40) hours during one or more work weeks
23 during the relevant time periods, and did not receive pay at one and one-half times their regular
24 rate of pay for all of their hours worked in excess of forty (40) hours, or were misclassified as
25

1 independent contractors.

2 23. As required by 29 U.S.C. § 216(b), Plaintiffs' Consent to Become a Party
3 Plaintiff will be filed contemporaneously to this Complaint.

4 **FACTUAL BACKGROUND**

5 24. Plaintiff was hired by Defendants in May of 2011 as a non-exempt hourly paid
6 prep cook.

7 25. Defendants specialized in catering events such as weddings and providing the
8 food and wait staff for such events.

9 26. Plaintiff's main job responsibility was to prepare and cook food for catered
10 events.

11 27. Plaintiff would also on occasion work on the hosting staff at events by serving
12 food to patrons.

13 28. Plaintiff was paid a rate of \$12.50 per hour.

14 29. Plaintiff was a non-exempt employee.

15 30. Plaintiff was not a manager.

16 31. Plaintiff did not exercise discretion and independent judgment with respect to
17 matters of significance.

18 32. From April 2011 through the present, Defendants failed to properly compensate
19 Plaintiff for his overtime hours.

20 33. During this time, Plaintiff routinely worked in excess of 60 hours per week and
21 not be compensated at time and one half her hourly rate for hours above 40 in those weeks..

22 34. During defendants' busier months of business; Plaintiff would work in excess of
23
24
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1 75 hours per week and not be compensated at time and one half her hourly rate for hours above
2 40 in those weeks.

3 35. Defendants' failure and/or refusal to properly compensate Plaintiff at the rates
4 and amounts required by the FLSA were/was willful.

5 36. Defendants refused and/or failed to properly disclose to or apprise Plaintiff of his
6 rights under the FLSA.

7 37. From July of 2010 and continuing through the present, Defendants failed to
8 properly compensate Plaintiff and all similarly situated employees for any of their overtime
9 hours. During this time, Plaintiffs and all similarly situated employees were regularly
10 scheduled to work approximately 50-75 hours per week. Plaintiffs also routinely worked
11 additional shifts.

12 38. Similarly situated individuals are all event staff who worked for Defendants
13 since July of 2010 and through the present.

14 39. Plaintiff has retained the law firm of Phillips Dayes Law Group, P.C. to represent
15 her in this litigation and have agreed to pay a reasonable fee for the services rendered in the
16 prosecution of this action on her behalf.

17 40. Plaintiff seeks to represent all similarly situated employees to whom Defendant
18 refused to pay the overtime when due pursuant to 29 U.S.C. § 207.

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22 **COUNT ONE**
VIOLATION OF FAIR LABOR STANDARDS ACT §207

23 41. Plaintiff incorporates and adopts paragraphs 1 through 40 above as if fully set
24 forth herein.

1 42. While employed at Blue House Catering, Plaintiff and all similarly situated
2 employees consistently and regularly worked multiple hours of overtime a week.

3 43. Defendants have intentionally failed and/or refused to pay Plaintiff and all
4 similarly situated employees' overtime according to the provisions of the FLSA.

5 44. Blue House Catering further has engaged in a widespread pattern and practice of
6 violating the provisions of the FLSA by failing to pay Plaintiff and all similarly situated
7 employees in accordance with § 207 of the FLSA.

8 45. There are numerous similarly situated employees and former employees of Blue
9 House Catering who have been improperly compensated in violation of the FLSA and who
10 would benefit from the issuance of Court-Supervised Notice of the present lawsuit and the
11 opportunity to join the present lawsuit.

12 46. The similarly situated employees are approximately over 60 present and former
13 employees who have the same job description as Plaintiffs and perform the same or similar job
14 functions.

15 47. Those similarly situated employees are known to Defendants and are readily
16 identifiable and locatable through Blue House Catering's records. Specifically, all current
17 employees and former employees of Defendant who have been employed with Blue House
18 Catering would benefit from Court-Supervised Notice and the opportunity to join the present
19 lawsuit and should be so notified.

20 48. As a result of Blue House Catering's violations of the FLSA, Plaintiff and all
21 similarly situated employees have suffered damages by failing to receive compensation in
22 accordance with § 207 of the FLSA.

23 49. Under 20 U.S.C. §216 Defendants are liable to Plaintiff and all similarly situated
24
25

1 employees for an amount equal to one and one-half times their regular pay rate for each hour
2 of overtime worked per week.

3 50. In addition to the amount of unpaid wages owed to Plaintiff and all similarly
4 situated employees are also entitled to recover an additional equal amount as liquidated
5 damages pursuant to 29 U.S.C. § 216(b).
6

7 51. Blue House Catering's actions in failing to compensate Plaintiff and all similarly
8 situated employees, in violation of the FLSA, were willful.

9 52. Blue House Catering has not made a good faith effort to comply with the FLSA.

10 53. Plaintiff is also entitled to an award of attorneys' fees pursuant to 29 U.S.C. §
11 216(b).

12 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor
13 against Defendants:

- 14 a. Awarding Plaintiff and all similarly situated employees overtime
15 compensation in the amount due to him for all of Plaintiff and all similarly
16 situated employees' time worked in excess of forty (40) hours per work week
17 at an amount equal to one and one-half times Plaintiff and all similarly
18 situated employees' regular rate while at work at Defendant Blue House
19 Catering;
20
21 b. Awarding Plaintiff and all similarly situated employees liquidated damages
22 in an amount equal to the overtime award;
23
24 c. Awarding Plaintiff and all similarly situated employees reasonable attorneys'
25 fees and costs and expenses of the litigation pursuant to 29 U.S.C. § 216(b);

- 1 d. For Plaintiff's and all similarly situated employees' costs incurred in this
2 action;
- 3 e. Awarding Plaintiff and all similarly situated employees pre-judgment
4 interest, at the highest legal rate, on all amounts set forth in subsections (a)
5 and (b) above from the date of the payment due for that pay period until paid
6 in full;
- 7 f. Awarding Plaintiff and all similarly situated employees post-judgment
8 interest, at the highest legal rate, on all awards from the date of such award
9 until paid in full;
- 10 g. Granting Plaintiff an Order, on an expedited basis, allowing her to send
11 Notice of this action, pursuant to 29 U.S.C. § 216(b), to those similarly
12 situated to Plaintiff; and
- 13 h. For such other and further relief as the Court deems just and proper.
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16 **COUNT TWO**
17 **DECLARATORY JUDGMENT**

18 54. Plaintiff incorporates and adopts the preceding paragraphs as if fully set forth
19 herein.

20 55. Plaintiff and Defendants have a Fair Labor Standards Act dispute pending.

21 56. The Court has jurisdiction to hear Plaintiff's request for declaratory relief
22 pursuant to the Declaratory Judgment Act 28 U.S.C. §§ 2201-2202.

23 57. Plaintiff may obtain declaratory relief.

24 58. Defendant employed Plaintiff.
25

1 59. Defendant is an enterprise covered by the FLSA.

2 60. Plaintiff is individually covered by the FLSA.

3 61. On certain occasions, Plaintiffs was not compensated at a rate of at least
4 minimum wage for work performed for Defendants.

5 62. Plaintiff is entitled to overtime wages pursuant to 29 U.S.C. §207.

6 63. Defendant did not keep accurate time records pursuant to 29 U.S.C §211(c) and
7
8 29 C.F.R. Part 516.

9 64. Plaintiff is entitled to an equal amount of liquidated damages as Defendant's
10 policy of failing to pay proper overtime compensation remains in effect.

11 65. Defendant did not rely on a good faith defense in its failure to abide by the
12 provisions of the FLSA and failure to pay overtime compensation.

13 66. It is in the public interest to have these declarations of rights recorded as
14 Plaintiff's declaratory judgment action serves the useful purposes of clarifying and settling the
15 legal relations at issue, preventing future harm, and promoting the remedial purposes of the
16 FLSA.
17

18 67. The declaratory judgment action further terminates and affords relief from
19 uncertainty, insecurity, and controversy giving rise to the proceeding.

20 WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor
21 against Defendants:

- 22 a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices
23 complained of herein are in violation of the minimum wage provisions of the
24 FLSA.
25

